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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,156	08/22/2003	Bruce Young	P1898US00	9592
32709	7590	05/23/2008		
GATEWAY, INC. ATTN: PATENT ATTORNEY 610 GATEWAY DRIVE N. SIOUX CITY, SD 57049			EXAMINER SIDDIQI, MOHAMMAD A	
			ART UNIT 2154	PAPER NUMBER
			MAIL DATE 05/23/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/646,156	<b>Applicant(s)</b> YOUNG, BRUCE	
	<b>Examiner</b> MOHAMMAD A. SIDDIQI	<b>Art Unit</b> 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 19-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

1. Claims 1-11 and 19-22 are presented for examination. Claims 12-18 have been cancelled. Claims 19-22 are new.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 7-11 are rejected under 35 U.S.C. 101 because whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. The claimed invention is directed to non-statutory subject matter. Independent claim 7 and their dependent claims are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 7-11 are directed to software (software per se) not stored on a computer-readable media. The content server is a software

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construct (software per se) performing various functionalities. The content server do not manipulate any hardware element.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Drosset et al. (6,662,231) (hereinafter Drosset).

6. As per claim 1 , Drosset discloses a method and system for distributing content, comprising:

transmitting content in a streaming content format (MP3, col 2, lines 38-52; col 4, lines 44-52);

receiving a request to store a particular piece of the content (download audio data files, col 2, lines 38-52); and

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delivering said particular piece of the content in an archival format to a storage media of a user when said request to store said particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

wherein said streaming content format prevents storage of the content (col 5, line 65 to col 6, line 10);

wherein said archival format allows storage of the content (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format); and

wherein said request and delivering of the particular piece of the content in said archival format occurs in real-time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40).

7. As per claim 7, Drosset discloses a method and system for distributing content from a content server over a network, comprising:

means on the content server (fig 7) for transmitting content in a streaming content format over the network (MP3, col 2, lines 38-52; col 4, lines 44-52);

means on the content server (fig 7) for receiving a request over the network to store a particular piece of the content (download audio data files, col 2, lines 38-52); and

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means on the content server (fig 7) for delivering said particular piece of the content over the network in an archival format to a storage media of a user when request to store said particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

wherein said streaming content format prevents storage of the content (col 5, line 65 to col 6, line 10);

wherein said archival format allows storage of the content (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format); and

wherein said request and delivering of the particular piece of the content in said archival format occurs in real-time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40).

8. As per claims 2 and 8, Drosset discloses streaming content format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

9. As per claims 3 and 9, Drosset discloses archival format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

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10. As per claims 4 and 10, Drosset discloses authorizing a payment for said request to store said particular piece of the content (col 2, lines 38-52).

11. As per claim 5, Drosset discloses authorizing said payment for said request includes debiting a charge against a prepayment for the content (col 2, lines 38-52).

12. As per claims 6 and 11, Drosset discloses the content transmitted in said streaming content format is in conformity with a list of preferences of said user (customized playlists, col 2, lines 44-46).

13. As per claim 19, Drosset discloses further comprising retrieving a list of preferences of a particular user (fig 2-3; col 6, line 51 to col 7, line 49); and

wherein said transmitting of content is performed in conformity with said list of preferences in a streaming content format to said particular user (fig 2-3, col 6, line 51 to col 7, line 49).

20. As per claim 20, Drosset discloses a method for distributing content, comprising:

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transmitting content in a first streaming content format (MP3, col 2, lines 38-52; col 4, lines 44-52);

receiving a request to store a particular piece of the transmitted content (download audio data files, col 2, lines 38-52); and

delivering said particular piece of the content in a second archival format to a storage media of a user when the request to store the particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

wherein the second archival format is different from the first streaming content format (stream audio, fig 7, col 6 line 65 – col 7, line 5), the second streaming content format preventing storage of the transmitted content on the storage media of the user (stream audio, fig 7, Microsoft media services col 7, lines 1-5) and the second archival format allowing storage of the delivered content on the storage media of the user (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format).

14. As per claim 21, Drosset discloses wherein the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (fig 7, col 2, lines 38-52, col 3, lines 20-34, col 6 line 65 – col 7, line 5).



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15. As per claim 22, Drosset discloses, wherein the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format (username / password, fig 7), and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (stream Audio, fig 7, col 2, lines 38-52, col 3, lines 20-34).

### ***Response to Arguments***

16. Applicant's arguments filed 10/30/2007 have been fully considered but they are not persuasive, therefore rejections to claims 1-11 is maintained.

17. Rejection to Claims 7-11 under 35 U.S.C. 101 is maintained. 35 U.S.C. 101 reads as follows:

Claims 7-11 are rejected under 35 U.S.C. 101 because whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. The claimed invention is directed to non-statutory subject matter. Independent claim 7 and their dependent claims are rejected under 35

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U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 7-11 are directed to software (software per se) not stored on a computer-readable media. The content server is a software construct (software per se) performing various functionalities. The content server does not manipulate any hardware element.

18. In the remarks applicants argued that:

**Argument:** Drosset does not disclose the second streaming content format preventing storage of the transmitted content on the storage media of the user.

**Response:** Drosset does not disclose the first format and the second streaming content format preventing storage of the transmitted content on the storage media of the user (stream audio, fig 7, Microsoft media services col 7, lines 1-5, the prior teaches streaming content which can not be stored by using software Microsoft media services, Further teaches MP3, content can be downloaded that anticipates storing on the client device).

### ***Conclusion***

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD A. SIDDIQI whose telephone number is (571)272-3976. The examiner can normally be reached on Monday -Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAS

/Nathan J. Flynn/  
Supervisory Patent Examiner, Art Unit 2154